IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

1. FAO NO. 77 OF 2001
&
2. FAO No.134 of 2001

Judgment Reserved on: 17.4.2007

Date of Decision: 26.4.2007

1. HRTC ……Appellant

Versus

Manohar Lal Sharma …… Respondent.

2. Manohar Lal Sharma ……..Appellant

Versus

HRTC ……Respondent

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting?

In FAO(MVA) No.77 of 2001

For the Appellant: Mr. Ashok Sharma, Advocate.

For respondent; Mr. K.S. Banyal, Advocate.
No.1

In FAO No.134 of 2001

For the Appellant : Mr. K.S. Banyal, Advocate.

For respondent No.1: Mr. Ashok Sharma, Advocate

For respondent No.2: Mr. Naveen Bhardwaj, Advocate.

Kuldip Singh, J

This judgment shall dispose of FAO(MVA) No. 77 of 2001 and FAO No.134 of 2001.

FAO (MVA) No.77 of 2001 has been filed by owner-Himachal

W*hether reporters of Local Papers may be allowed to see the Judgment?*

Road Transport Corporation (for short Corporation) of the bus No.HIS-2467against award dated 1.2.2000 passed by learned Motor Accident Claims Tribunal, Shimla in MACC No.165-S/2 of 1998 awarding Rs.6,44,000/- compensation along with interest at the rate of 12% per annum from the date of the petition to the date of payment in favour of Manohar Lal Sharma, claimant and against owner of the bus as well as driver Rashpal Singh. FAO No.134 of 2001 has been filed by Manohar Lal Sharma, claimant against the award dated 1.2.2000 against owner and driver of the bus for enhancement of the compensation.

Both these appeals have arisen from common award, therefore, these are being disposed of by common judgment. The parties in this judgment are referred in the same manner as referred in the impugned award.

The brief facts of the case are that petitioner-claimant is a Diploma Holder in Mechanical and Electrical Engineering. He has served in the Army for 22 years and is now retired. On 7.3.1998 he had gone to Tara Devi to appear in an interview for the post of an Auto Engineer with a private firm. At about 12.30 pm. when he was standing at tea stall situated towards Solan side, he saw Bus No.HIS-2467 being towed by another bus of the Corporation and taken towards Solan side. He noticed the bus in question coming backwards uncontrolled. The petitioner could make out that the towing rope had given way and the bus was moving backwards and for that reason the driver could not control the bus. Apprehending danger, he moved to the hill side of the road. The bus hit him as a result of which his both legs were fractured at several points. The bus also hit a moving car. The owner of the said car brought the petitioner to the hospital. The petitioner has alleged that besides his widowed old mother, he has a wife and three children and that all of them are dependant upon him.

It is the case of the petitioner that if he had not suffered injuries he would have got some job and would have started earning about Rs.10,000/- per month. He has also alleged that he was already having income of Rs.6,000/- per month at the time of accident. On account of injuries sustained by him, he is not in a position to do the job of Mechanical Engineer. He has alleged that he has spend huge amount on his treatment. He has claimed Rs.12 lacs as compensation.

The Corporation contested the claim and denied the averments of petition for want of knowledge. However, Corporation did not deny the accident and the injuries sustained by the petitioner in the accident. The driver-respondent No.2 has also contested the claim of the petitioner and has denied that the accident has taken place because of any act of rashness and negligence on his part.

The learned Tribunal returned the finding that accident had taken place because of careless and negligent tow-chaining of the bus and has awarded Rs.6,44,000/- compensation along with interest at the rate of 12% to the petitioner to be paid by owner and driver jointly and severally as noticed above.

In FAO(MVA) No.134 of 2001, CMP No.947 of 2005 was allowed and the petitioner-claimant was permitted to lead additional evidence. He accordingly, examined AW-1 Keshav Sharma and AW-2 Parkash Chand as his witnesses by way of additional evidence.

I have heard the learned counsel for the parties and have also gone through the record.

The learned counsel for the Corporation in view of material on record has not seriously challenged the findings of the Tribunal on the point of negligence of the driver of bus No.HIS-2467 at the time of the accident. Even otherwise it has come in evidence that respondent No.2 was driving Bus No.HIS- 2467 at the time of accident and this bus was being hauled to

Tara Devi workshop by other bus bearing Registration No HIS-07-2056. Respondent No.2 driver appeared as RW-2 and has deposed that tow chain gave way near the bumper and because of that accident took place. It is thus clear that tow-chaining of the bus HIS-2467 was not done properly and because of that accident took place. Thus the negligence of the driver of bus No.HIS-2467 at the time of accident has been proved and the Tribunal has rightly returned the findings that accident has taken place due to rash and negligent driving of bus No.HIS -2467 by respondent No.2.

Learned counsel for the Corporation has submitted that no loss of income has been proved by the petitioner-claimant. He retired from army in May, 1997. The accident took place on 7.3.1998. The Tribunal without any basis has assumed the loss of income of Rs.7,000/- per month of the petitioner-claimant. There is no evidence that the petitioner-claimant has taken any step for opening any workshop nor he has proved that any job was in his hand which he lost because of the accident. He has also submitted that the petitioner-claimant has not proved the actual loss, expenses allegedly incurred by him on his treatment and the learned Tribunal has awarded excess compensation to the petitioner-claimant contrary to proved material on record. He has submitted that on one hand the learned Tribunal has come to the conclusion that earning capacity of the petitioner has been reduced and he has suffered loss of future earning at the rate of Rs.2100/- per month and by applying multiplier of 12 years an award of Rs.3,02,400/-or say Rs.3,00,000/- has been awarded to the petitioner-claimant but learned Tribunal has also recorded a finding that the petitioner-claimant was not able to do any work at least for two years so he is entitled to compensation at the rate of Rs.7,000/- per month for two years which comes to Rs.1,68,000/-. The plea of the learned counsel is that the award amounts of Rs.3,00,000/- and Rs.1,68,000/- are overlapping and both amounts simultaneously have been wrongly awarded to the petitioner-

claimant. It is also the contention of the learned counsel that interest on the award amount has been allowed by the learned Tribunal at higher rate.

The learned counsel for the petitioner-claimant has submitted that the learned Tribunal has awarded less compensation to the petitioner-claimant. According to the learned counsel the petitioner-claimant is entitled to Rs.12,00,000/- compensation along with interest at the rate of 12% from the date of petition till payment on the basis of evidence led before learned Tribunal as well as in this Court by way of additional evidence.

The learned Tribunal has awarded Rs.3,00,000/- to the petitioner-claimant on account of loss of future earnings , Rs.1,68,000/- on account of total loss of earnings for two years, Rs.76,000/- for purchasing medicines and travelling expenses for the special diet and the expenses of attendant, Rs.1,00,000/- on account of physical pain suffering and loss of amenities of life. In all learned Tribunal has awarded Rs.6,44,000/- to the petitioner.

The learned counsel for the Corporation has submitted that the Tribunal without any basis has assumed the loss of earnings of petitioner Rs.7,000/- per month. The petitioner-claimant has examined PW-1 Pankaj Goel, who has proved interview letter issued to petitioner-claimant. The PW-2 Dr. R.S. Yadav has proved disability certificate Ex.P3 of petitioner-claimant. The petitioner-claimant himself appeared as PW-3 and has stated that due to accident he has suffered fractures of both the legs at seven places. The left leg was completely crushed. Some portions of the bones of the left leg got separated and fell on the spot. After the accident he was taken to Ripon hospital and then to IGMC, Shimla where he remained admitted from 7..3.1998 to 21.3.1998. He has spent a sum of Rs.1,10,000/- on his treatment and expenses on his attendant. After discharging from IGMC, he took treatment in Command Hospital, Chandi Mandir where he was admitted in two spells. In the first spell he was

admitted from 24.12.1998 to 5.14.1999 and in second spell from 18.9.1999 to 30.11.1999. He was admitted for bone grafting and plastic surgery. Bone grafting was not successful and he isl not fit to stand on his legs. He has proved taxi receipts ExPA/1 to PA/14, medicines voucher Ex PA/15 to 79 and treatment papers in different hospital Ex.PA/ 80 to Ex.PA/89. He has deposed that he has done Diploma in Electrical and Mechanical Engineering and has served in the army as Auto Engineer for 22 years. He was prescribed special diet which he purchased vide receipts Ex.PD/1 to Ex.PD/3. He was under treatment at the time of making statement and he visits Command Hospital, Chandi Mandir as per directions of the doctor. He stated that he was planning to get some Govt. or private job in view of his qualification and experience and he was expecting to get the job having salary Rs, 4,000/- to 15,000/- per month. PW-4 Varinder Kumar has deposed that he attended the petitioner-claimant from March, 1998 to October, 1999 and he was paid Rs.1000/- per month RW-2 Rashpal stated about the accident. This is the entire evidence which has been led by the parties.

It has come on record that petitioner served the army for 22 years. He is Diploma Holder in Mechanical Engineering. He has retired from the army. He had sufficient experience and potential for self employment as well as to serve under some other employer. At the time of accident he was 43 years old and could very well earn for some more time even after the retirement from army. In claim cases some times some factors are to be assumed to a limited extent keeping in view normal course of events to which Court cannot show ignorance. Therefore, the loss of earnings of Rs.7,000/- per month assessed by the Tribunal of petitioner is not excessive keeping in view his qualification, experience and nature of job. The Tribunal for assessing the actual loss has taken income Rs.2100/- per month in view of 30% disability of the petitioner and has thus awarded

Rs.3,00,000/- to the petitioner by applying multiplier of 12 years. The Tribunal has awarded Rs.1,68,000/- to the petitioner for total loss of income at the rate of Rs.7,000/- for two years. The Tribunal has considered the evidence on record and has rightly come to the conclusion that it can be safely inferred that the petitioner on account of injuries was not in position to earn anything for at least two years. The award amount of Rs.1,68,000/- under this head is just and reasonable and no fault can be found with this amount.

However, there is substance in one submission of the learned counsel for the Corporation that the Tribunal has awarded Rs.3,00,000/- to the petitioner by taking his loss of income Rs.2100/- per month and another amount of Rs.1,68,000/- for total loss of earnings of petitioner for two years by taking his loss of income Rs.7,000/- per month. Once loss of income for two years at the rate of Rs.7000/- per month has been awarded to petitioner by awarding Rs.1,68,000/- then petitioner is not entitled to another loss of income at the rate of Rs.2100/- per month at least for two years while awarding Rs.3,00,000/-, this amount comes to Rs.50, 400/- Thus instead of Rs.3,00,000/- compensation the petitioner is entitled to Rs.2,49,600/-(Rs.3,00,000 – Rs.50,400). Therefore petitioner is entitled to Rs.2,49,600/- on account of future loss of earnings.

The learned Tribunal after appreciation of evidence has also awarded Rs.76,000/- on account of cost of medicines, travelling, special diet and the expenses of attendant. The amount so awarded is based upon evidence and is otherwise reasonable. The learned counsel for the Corporation has failed to point out any defect for awarding this amount to the petitioner. The petitioner has suffered serious injuries and remained under pain and suffering, therefore, amount of Rs.1,00,000/- awarded to petitioner by Tribunal on account of physical pain suffering and loss of

amenities of life is also reasonable. Thus in all in FAO NO.77 of 2001 the petitioner is entitled to Rs.5,93,600/- compensation.

The learned counsel for the petitioner has submitted that petitioner suffered serious injuries and remained without work for long time. The petitioner has not recovered fully even now, he requires attendant and for his treatment he has to go to Chandigarh. The learned counsel has referred to the additional evidence and has submitted that petitioner is entitled to Rs.12,00,000/- compensation along with 12% interest. The petitioner has failed to make out any case for enhancement of compensation to petitioner on the basis of material on record which has come before the learned Tribunal as well as on the basis of material which has come on record in the appeal In the appeal the petitioner has examined AW-1 Keshav Ram, who has stated that he has hired taxi to petitioner on various occasions and he has proved receipts Ex.AW-1/A to AW-1/O. But in his statement he has not stated for what purpose petitioner had hired the taxi on different occasions nor there is other evidence on record that the petitioner in fact has hired taxi on different occasions as per receipts Ex..AW-1/A to AW-1/O for the purpose of his treatment. Therefore, petitioner can not take benefit of amounts spent by him for hiring taxi on different occasions as stated by AW-1 Keshav Ram. AW-2 Parkash Chand has stated that he was engaged by petitioner in the year 2001 to take care for him and he was paid Rs.1200/- per month along with food etc. He said that he worked with petitioner upto the year 2004. In his statement, receipts Ex.AW-2/1 to AW-2/10 and marks Ex.A-1 to Ex.A-12 have come but these documents have not been proved. AW-2 Parkash Chand has not stated that Ex.AW-2/1 to AW-2/10 and marks Ex.A1 to Ex.A-12 were prepared by him or any body else in his presence or these documents bear his signature. There is no other evidence that Parkash Chand was engaged by petitioner from 2001 to 2004 on Rs.1200/- per

month wages. Therefore, no benefit can be given to the petitioner on the basis of Ex.AW-2/1 to Ex.AW-2/10 and marks Ex.A-1 to Ex.A-12. The petitioner is not entitled to any enhancement. Thus in FAO No.134 of 2001 the petitioner is not entitled to any enhancement of compensation.

The learned counsel for the Corporation has submitted that the Tribunal has awarded interest at the rate of 12% per annum which is on higher side, rather interest should not be more than 9% per annum. In my opinion this submission of the learned counsel has also force. Therefore, the petitioner is entitled to interest at the rate of 9% per annum on the award amount Rs.5,93,600/-.

No other point was urged.

The net result on my above discussion is that FAO No.77 of 2001 is partly allowed, impugned award is modified and it is held that petitioner is entitled to Rs.5,93,600/- compensation along with interest at the rate of 9% per annum from the date of filing of the petition till payment which is to be paid by respondents No.1 & 2 jointly and severally. The FAO No.134 of 2001 is dismissed. The parties shall bear their own costs.

(Kuldip Singh)
Judge

April 26, 2007
(sks)